

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MOONSCOOP SAS,) CASE NO. 1:09CV1885
)
Plaintiff,) JUDGE JAMES S. GWIN
)
v.)
)
AMERICAN GREETINGS CORPORATION,)
)
Defendant.)
)

PLAINTIFF'S OBJECTION AND PROPOSED JURY INTERROGATORIES

Plaintiff MoonScoop SAS objects to the proposed interrogatories submitted by American Greetings as inconsistent with the decision of the Sixth Circuit in this case [See Doc. #170, pp. 34-37]. The Sixth Circuit reasoned that the jury should be given two questions: (1) was the drag-along provision in the 2008 letter agreement between American Greetings and Cookie Jar self-executing or not; and (2) if it was not, was American Greetings in material breach of the Binding Term Sheet on or before June 7, 2009? *MoonScoop SAS et al. v. American Greetings Corp. et al.*, Nos. 10-3668, 10-3693 (6th Cir. July 16, 2012), slip op. at 9, 14.

The Sixth Circuit explained that if the jury finds the drag-along not self-executing, and then finds that American Greetings was in material breach of contract, MoonScoop was excused from having to meet the conditions precedent in the contract. *See id.* at 14. The Sixth Circuit further noted that if American Greetings was in material breach, then American Greetings' argument that "MoonScoop was literally not able to perform on June 7 because MoonScoop agreed to pay too late in the day" fails because MoonScoop was "entitled to halt performance and sue for damages." *Id.* at 14.

MoonScoop submits that no jury interrogatories are necessary in this case because the number of critical issues is small and interrogatories carry the potential to mislead the jury. If the Court exercises its discretion to submit them, however, MoonScoop proposes the interrogatories attached hereto as Exhibit A, which are consistent with the Sixth Circuit's analysis.

November 12, 2012

Respectfully submitted,

s/ Michael J. Garvin

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Objection and Proposed Jury Interrogatories has been filed electronically with the Court this 12th day of November, 2012. Service on all registered attorneys is effected by the Court's ECF system.

s/ Michael J. Garvin

Michael J. Garvin